IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:26-02-2002

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No. 6498 of 1998 and W.M.P.No.9988 of 1998

1. S.Gopinath
2. K.Veeraraghavan
3. L.jayashankar
4. R.Narasimalu
5. C.Srinivasan
6. K.Selvam
7. E.Srinivasan
8. M.Iabal
9. V.Ravichandran
10.J.Willim Bose
11.N.Kissan
12.K.P.gopalakrishnan
13.S.Ashokkumar
14.R.Vengatesan ..Petitioners

-vs-

1. Union of India,
Rep. by the General Manager,
Southern Railway,
Madras-3.

2. The Central Administrative Tribunal,
Madras Bench, Chennai. ..Respondents

Petition filed under Article 226 of the Constitution praying for the issue of writ of certiorarified mandamus as stated therein.

For petitioner : Ms.R.Vaigai
For 1st respondent : Mr.R.Radhakrishnan

: ORDER

(The order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The challenge in this writ petition is to the order of the

Central Administrative Tribunal, dated 14.7.1997 in O.A.Nos.302 of 1994 etc., in so far as it restricted the claim of the petitioners for regularisation in the Railway Administration from the year 1993-94, while their claim based on the judgment of the Honourable Supreme Court reported in M.M.R.Khan and others -vs- Union of India and others (1990 Supp SCC 191) was with effect from 1.4.1999.

2. At the outset we wish to point out that the Railway Administration had chosen to accept the order of the Tribunal and accord necessary regularisation for the petitioners from 1993-94 when the nonstatutory recognised canteen was taken over by the Railway Administration.

3. Ms.R.Vaigai, learned counsel for the petitioners would contend that when the Honourable Supreme Court was pleased to confer a benefit to the canteen employees for regularisation as from 1.4.1990, the respondents cannot attempt to make a distinction in respect of the casual employees alone and deprive them of such benefit conferred by the Honourable Supreme Court, which benefit entitled all those employed even in the non-statutory recognised canteens for regularisation with effect from 1.4.1990. In this context it is relevant to refer to the judgment of the Honourable Supreme Court, with particular reference to paragraphs 36 and 39, which read as under:-

"36. These arguments can be dealt with together. In the first instance, there is hardly any difference between the statutory canteens and non-statutory recognised canteens. The statutory canteens are established wherever the railway establishments employ more than 250 persons as is mandatory under the provisions of Section 46 of the Act while non-statutory canteens are required to be established under paragraph 2831 of the Railway Establishment Manual where the strength of the staff is 100 or more. In terms of the said paragraph, the nonstatutory canteens to be recognised have to be approved of by the Railway Board in advance. Every railway administration seeking to set up such canteens is required to approach the Railway Board for their prior approval/recognition indicating financial implications involved duly vetted by the Financial Advisor and Chief Accounts Officer of the railway concerned. It is only when the approval is accorded by the Railway Board that the canteen is treated as a recognised nonstatutory canteen. By the sanction, the details in regard to the number of staff to be employed in the canteen, recurring and non-recurring expenditure etc. are regulated. The only material difference between statutory canteen and non-statutory recognised canteen is that while one is obligatory under the said Act the other is non. However, there is no difference in the management of the two types of canteens as is evident from the provisions of paragraphs 2832 and 2833 which respectively provide for their management. Regarding the incidence of cost to be borne by the railways again, as far as the Manual is concerned, the only additional obligation cast on the administration, in the case of the statutory canteens is that in addition to the facilities given to the non-statutory canteens, the administration

has also to meet the statutory obligations in respect of the expenditure for providing and maintaining canteens arising from the said Act and the rules framed thereunder. A perusal of the relevant provisions shows that the said Act and the rules made thereunder do not make demands on the administration for more expenditure than what is provided for in the Railway Manual for the non-statutory canteens. We have already referred to the service conditions applicable to the employees of the statutory and non-statutory canteens we have pointed out the relevant provisions of the Administrative Instructions on Departmental Canteens in Government Offices and Government Industrial Establishments. These Instructions are applicable to both statutory and non-statutory recognised canteens. The instructions do not make any difference between the two so far as their applicability is concerned. In fact these Instructions require that the canteens run by engaging solely part time daily wage workers may be converted to departmental canteens (para 1 .3). Hence we do not see why canteens so far as their service conditions are concerned. For this very reason, the two notifications of December 11,1979 and December 23, 1980 (supra) should also be equally applicable to the employees of these canteens. If this is so, then these employees would also be entitled to be treated as railway servants. A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. Surely it cannot be argued that the employees who otherwise do the same work and work under the same conditions and under a similar management have to be treated differently merely because the canteen happens to be run at an establishment which employs 250 or less than 250 members of the staff. The smaller strength of the staff may justify a smaller number of the canteen workers to serve them. BUT THAT DOES NOT MAKE ANY DIFFERENCE TO THE WORKING CONDITIONS OF SUCH WORKERS.

....39. The result, therefore, is that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the railway establishments are railway employees and they are entitled to be treated as such. The Railway Board has already treated the employees of all statutory and 11 Delhi based nonstatutory recognised canteens as railway employees w.e.f. October 22, 1980. The employees of the other non-statutory recognised canteens will, however, be treated as railway employees w.e.f. April 1, 1990. They would, therefore, be entitled to all benefits as such railway employees with effect from the said date, according to the service conditions prescribed for them under the relevant rules/orders."

4. The Honourable Supreme Court while conferring the benefit of regularisation in respect of the employees employed in the various canteen,s with particular reference to the canteens which were categorised as statutory recognised canteens and non-statutory recognised canteens, has taken into account the financial implications involved when such recognition was accorded by the Railway Board. On going through the whole judgment of the Honourable Supreme Court, we find that what was primarily considered was the question relating to the regularisation of the employees of the statutory and non-statutory recognised canteens as

railway employees which relief was ultimately granted by the Honourable Supreme Court in paragraph 39 of its judgment. We are not able to discern from the said judgment any having been recognised in respect of casual employees like that of the petitioners in the non-statutory recognised canteens. It cannot, therefore, be held that the rights of the petitioners flowed from the said judgment of the Honourable Supreme Court in order to hold that the petitioners are entitled to be regularised as Railway Employees as from 1.4.1990 as has been granted by the Honourable Supreme Court, in respect of whom there was already a determination with regard to the holding of their post in the respective sanctioned posts. Nevertheless, when the respondent Railway Administration came forward to regularise the petitioners as stated in their reply statement before the Tribunal from the year 1996, the Tribunal was of the view that such regularisation should be given effect to from the date the railway administration took over the canteens viz., from 1993-94. Therefore, the said relief granted by the Tribunal now having been accepted by the Railway Administration, at best, the petitioners should only be satisfied with such a larger relief granted by the Tribunal which in our opinion came to be granted by the Railway Administration on their own, without any reference to the relief granted by the Honourable Supreme Court in the judgment referred to above. While that be the situation, the present claim of the petitioners is that the regularisation so granted in favour of them should at least date back to 3.4.1992 on which date certain other casuals who ranked above the petitioners in the seniority as casual labourers were regularised. In other words, the present claim of the petitioners is that when seven of such casuals were regularised with effect from 3.4.1992, the same benefit should be extended to the petitioners as well. It is not in dispute that those seven employees ranked seniors to the petitioners as casual labourers in the canteen in which they were employed.

5. It is also not in dispute that on a representation made by the various casual labourers their seniority list was drawn and with reference to such seniority no dispute can be raised. On this aspect, when we heard the learned counsel for the respondents it came to light that subsequent to the taking over of the canteen by the Railway Administration, taking into account several aspects including the policy of the Railway Administration, confine the canteen activities to the employees of the Railway Administration alone the required staff strength in the canteen came to be determined at particular level and on that basis as and when vacancy arose the regularisation came to be made and it was on that basis the seven employees in the Casual Labourers List, who were senior in their ranking, came to be accommodated in the available sanctioned post as from 3.4.1992. When the basis of such regularisation from 3.4.1992 was fully justified it cannot be held that even in the absence of availability of sanctioned post all the petitioners should be granted the relief of regularisation with effect from 3.4.1992. Therefore, we are unable to countenance the claim of the petitioners for extending the benefit of regularisation given to those seven employees from 3.4.1992 to the petitioners also.

6. As far as the submission made on behalf of the petitioners that the sanctioning of the strength after regularisation was not properly made, when the said question was not the subject matter of controversy, there is no scope for going into the said question for consideration in this writ petition. Therefore, we are unable to find fault with the action of the Railway Administration in respect of the determination of the sanction of various posts in the canteen after it was taken over by the Railway Administration. Therefore, on this ground as well there is no scope for granting any relief to the petitioners in this writ petition.

7. In such circumstances, there being no justification in the claim of the petitioners for claiming regularisation right from 1.4.1990, we are unable to interfere with the order of the Tribunal in so far as it declined to grant the said relief from that date. The writ petition, therefore, fails and the same is accordingly dismissed. The W. M.P is closed.
sd/
Assistant Registrar,
/True Copy/

Sub Assistant Registrar
Statistics/CS

Copy to

1. The General Manager,
Southern Railway,
Madras-3.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.